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Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

)
Amendment of Section 73.606(b)
of the Commission's Rules, the
Table of Allotments for
Television Broadcast Stations
(Boise, Idaho))

RM-9039

To: Chief, Allocations Branch

AMENDMENT TO PETITION FOR RULEMAKING

KM Communications, Inc. ("KM"), by its attorneys, and pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. § 1.401, hereby submits this amendment to its petition for rulemaking filed on July 10, 1996 (the "Petition"), requesting the Commission to amend Section 73.606(b), 47 C.F.R. § 73.606(b), the Table of Allotments for Television Broadcast Stations, to substitute Channel 21 for Channel 14 at Boise, Idaho, and to authorize KM to amend its pending application for Channel 14 at Boise (File No. BPCT-941215KF) to specify operation on Channel 21 without subjecting the application to a new cut-off. By this amendment, KM requests that the Commission substitute analog National Television System Committee ("NTSC") Channel 33 for Channel 14, instead of Channel 21. This amendment is necessary because in the Sixth Report and Order¹ in the digital television ("DTV") proceeding, the Commission allotted Channel 21 as the DTV channel to be paired with NTSC Channel 4,

¹ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Report and Order, FCC 97-115 (released April 21, 1997) ("Sixth Report and Order").

O&Y

currently licensed to Boise, Idaho, and therefore Channel 21 is no longer available for substitution for Channel 14.

KM also requests, if appropriate at this time, the Commission to amend Section 73.622(b), 47 C.F.R. § 73.622(b), the DTV Table of Allotments for Television Broadcast Stations, to allot Channel 29 (or another suitable available channel) as the DTV channel to be paired with NTSC Channel 33 at Boise.

In support of this amendment to the Petition, KM submits the following:

1. KM requests that all statements and arguments made in its Petition be incorporated herein by reference as if restated fully herein, except to the extent expressly amended herein.

2. To summarize briefly, in the Petition KM proposed to substitute a vacant channel for Channel 14 in order to resolve the potential for interference to existing land mobile radio licensees and aural studio-transmitter links ("STLs"), and the resulting additional costs associated with resolving any actual interference that may occur, which is unique to the proposed operation on Channel 14. KM demonstrated that a vacant channel may be allotted to Boise in compliance with the minimum distance separation requirements of the Commission's Rules, as well as in compliance with the Commission's policies to protect future advance television channel allotments. KM also demonstrated that there was at least one additional channel available for other parties that may express an interest in serving the Boise community at some future date. The substitution requested by KM would resolve certain land mobile radio interference concerns, facilitate the resolution of a comparative proceeding and remove an obstacle to the approval of a settlement agreement and related joint request pending before the Commission since December

1995.² KM requested that it be allowed to amend its pending application to specify the new channel and retain cut-off protection, consistent with established Commission precedent.

3. In the Sixth Report and Order, the Commission allotted Channel 21, the channel originally requested by KM in the Petition, as the DTV channel to be paired with NTSC Channel 4 in Boise, see Sixth Report and Order, Appendix B at B-18, despite its stated intention to "avoid creating DTV allotments that would conflict with proposed new NTSC allotments" in petitions for rulemaking filed before the July 25, 1996 adoption of the Sixth Further NPRM³ in the DTV proceeding. Id. at ¶ 112. Therefore, since Channel 21 is no longer available for substitution for Channel 14, as proposed by KM in its Petition (filed on July 10, 1996, prior to the July 25, 1996 cut-off date set by the Sixth Further NPRM), KM submits this amendment to request that NTSC Channel 33 be substituted for Channel 14 at Boise. Absent this amendment, the Petition may be rendered moot, KM could not amend its application (which would continue to be for Channel 14), the Commission would have to use valuable resources to decide the land mobile radio petition on the merits, and KM may have to spend an estimated \$500,000 or more to resolve any actual land mobile radio interference that may occur, a solution that is undesirable to KM and the local land mobile radio industry when there are sufficient channels in the area

² As set forth more fully in the Petition, KM's application (File No. BPCT-941215KF) has been accepted for filing and only one other party, International Television Network, Inc. ("ITN") filed a competing, mutually-exclusive application (File No. BPCT-950320KE) prior to the March 20, 1995 cut-off date. KM and ITN executed and filed a settlement agreement and joint request for approval with the Commission on December 14, 1995, which remains pending, whereby ITN's application would be dismissed and KM's application granted.

³ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996)("Sixth Further NPRM").

to resolve this issue via a channel substitution. This amendment to the Petition is consistent with the July 25, 1996 cut-off date for filing petitions for rulemaking, since it is not a new petition for rulemaking and the original Petition was filed prior to the cut-off.⁴

4. The attached Engineering Report⁵ demonstrates that NTSC Channel 33 and DTV Channel 29 may be allotted to Boise in compliance with the minimum distance separation requirements of the Commission's Rules, the Commission's policies to protect future advance television channel allotments, and consistent with the Sixth Report and Order. The Engineering Report also demonstrates that there are at least two additional channels, Channels 36 and 39, available as NTSC and/or DTV channels for other parties that may express an interest in serving the Boise community at some future date, see Engineering Report at 2, and KM submits that other UHF channels likely are available. The proposed Channel 33 allotment is approximately 555 kilometers from Portland, Oregon, and therefore is not subject to the advance television freeze. Id.

5. Commission policy allows an additional channel to be added for a community if the only vacant channel is the subject of a comparative proceeding, and the new channel can be added consistent with other allotment policies, such as the minimum distance separation rules and the advance television freeze policy, and where additional channels are available for

⁴ KM requests that the Commission accept this amendment and adopt a Notice of Proposed Rule Making ("NPRM") in this matter prior to the deadline for petitions for reconsideration of the Sixth Report and Order, so that KM may determine whether it is necessary to file a petition for reconsideration of the allotment of DTV Channel 21 to Boise in that order, in conflict with the allotment proposed by KM in its then-pending Petition.

⁵ See Engineering Report of Cohen, Dippell and Everist, P.C., dated May 1997, attached hereto as Exhibit A ("Engineering Report").

allotment in response to other expressions of interest. See Sioux Falls, South Dakota, 11 FCC Rcd 1069 (Allocations Branch 1996). In allotting an additional channel to Sioux Falls, the Commission noted that the public interest would be served by potentially providing a sixth local television service for the community, and by avoiding the need for a comparative hearing. Id. at ¶ 5. The Commission also has allowed petitioners to retain cut-off protection for their pending applications in similar circumstances, where no other timely-filed expressions of interest are filed or, if such expressions of interest are filed, there is at least one additional allotment which can be made to accommodate those parties. Id.; see also, Copeland, Kansas, 5 FCC Rcd 7682 (1990); Roseburg, Oregon, 6 FCC Rcd 4369 (1991).

6. The Engineering Report demonstrates that at least two additional channels, Channels 36 and 39, are available for allotment to accommodate other expressions of interest in serving Boise, and submits that there likely are more than two such additional channels available for the area. Accordingly, KM requests that it be authorized to amend its pending application to specify Channel 33 while retaining its cut-off protection. Such action would allow the Commission to resolve the land mobile radio concerns, and process the settlement agreement and Joint Request, more promptly, thereby resolving the comparative proceeding and expediting the initiation of a new television service to Boise.

7. KM hereby states its present intention to amend its pending application to specify Channel 33 in the event the Commission grants this petition and substitutes NTSC Channel 33 for Channel 14, with cut-off protection for KM, and to build a station promptly upon the grant of a construction permit authorizing the construction of a station. KM also requests that Channel 29 be allotted or reserved as the DTV channel to be paired with NTSC Channel 33.


8. The public interest would be served by potentially providing a third commercial local television service licensed to Boise, and by conserving the Commission resources that otherwise would be required to resolve the land mobile radio petition to deny and to conduct a comparative hearing.

9. KM respectfully requests that the Commission promptly issue an NPRM in this matter, and to that end KM is submitting as Exhibit B a draft NPRM for the Commission's consideration and use, as permitted by the Commission's rules.⁶ KM understands that processing of the Petition may have been delayed pending action in the DTV proceeding, but submits that with the recent adoption of the Sixth Report and Order, the time is now ripe for action on the Petition. In the event that the time is not yet ripe for a request for an amendment to the DTV Table of Allotments, KM requests that the Commission promptly process the Petition, as amended, and issue a Notice of Proposed Rule Making for the substitution for NTSC Channel 33 for Channel 14, deferring action on the request for Channel 29 to be allotted as the DTV channel to be paired with NTSC Channel 33 until some appropriate future date.

⁶ See 47 C.F.R. § 1.401(d). KM would be happy to revise the draft NPRM, or supply the NPRM to the Commission on a diskette in WordPerfect 5.1 or other format, upon the Commission's request.

Wherefore, the above premises being considered, KM requests that this amendment be accepted; that Section 73.606(b), the Table of Allotments for Television Broadcast Stations, be amended to substitute NTSC Channel 33 for Channel 14 at Boise, Idaho; that KM be authorized to amend its pending application for NTSC Channel 14 at Boise, Idaho to specify operation on NTSC Channel 33, without subjecting the application to a new cut-off; and that Section 73.622(b), the DTV Table of Allotments for Television Broadcast Stations, be amended to allot Channel 29 as the DTV channel to be paired with NTSC Channel 33 at Boise.

Respectfully submitted,
KM COMMUNICATIONS, INC.

By: 
Alan C. Campbell
Jeffrey L. Timmons

Its Attorneys

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(202) 728-0400

May 15, 1997

ENGINEERING REPORT
TO AMEND SECTIONS 73.606 AND 73.621
OF THE FCC RULES BY SUBSTITUTING
UHF-TV NTSC CHANNEL 33 FOR CHANNEL 14
AT BOISE IDAHO

MAY 1997

COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.

City of Washington)
) ss
District of Columbia)

He is a graduate electrical engineer of the University of Canterbury, New Zealand, a Registered Professional Engineer in the District of Columbia, the State of Virginia, the State of South Carolina, and Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; previously employed for 15 years with the New Zealand Broadcasting Corporation; a member of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Federal Communications Consulting Engineers (AFCCE), and the National Society of Professional Engineers (NSPE).

That the attached engineering report was prepared by him or under his supervision and direction and,

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.

Warren M. Lewis

Warren M. Powis
District of Columbia
Professional Engineer
Registration No. 8339

Subscribed and sworn to before me this 14th day of May, 1997.

day of May, 1997.
Carl E. Lyons
Notary Public

My Commission Expires: 2/28/98

This engineering report has been prepared on behalf of KM Communications, Inc. ("KM"), applicant for a UHF-TV station on Channel 14 at Boise, Idaho (FCC File No. BPCT-941215KF). KM previously proposed to amend the TV Table of Allotments, Section 73.606 of the FCC Rules to substitute Channel 21 for Channel 14. The DTV Table of Allotments in Appendix B of MM Docket No. 87-268¹ conflicts with the previous Channel 21 request. KM now requests an amendment of Sections 73.606 and 73.622 as follows.

Boise, Idaho

Section 73.606(b): Substitute NTSC Channel 33 for Channel 14

Section 73.622(b): Add complementary DTV Channel 29

The reference coordinates for the proposed new allotment are at the Deer Point.antenna farm.

NAD-27

North Latitude: 43° 45' 18"

West Longitude: 116° 05' 52"

The proposed Deer Point transmitter site is located 19.7 km north-northeast of Boise, Idaho, and complies with the FCC minimum distances separations required under Sections 73.610, 73.623 and 73.698 of the FCC Rules.

¹Sixth Report and Order, adopted April 3, 1997, released April 21, 1997

The proposed Deer Point operation will provide City Grade (80 dBu) service to Boise, Idaho.

Allocation Situation

Tables I and I-A show the allocation situation for the proposed NTSC Channel 33 allotment. Table II shows the allocation situation for a suggested companion DTV Channel 29. The proposed allotments meet the required distance separations to all United States allotments.

Tables III and III-A show the allocation situation for supplementary NTSC Channel 39 which would be available for allotment if other parties express an interest in serving Boise, Idaho. Table IV shows the allocation situation for a potential companion DTV Channel 36. Accordingly, KM requests that it be permitted to modify its application to specify NTSC Channel 33 "without loss of cut-off protection."

The NTSC Channels 33 and 39 allotments and DTV Channels 29 and 36 allotments meet the ATV freeze for TV applications in that it is located 555.6 km from the Portland, Oregon, reference point (NL 45°31'06", WL 122°40'35").

Reasons for Channel Substitution

A petition to deny KM's Channel 14 application was filed by Idaho Communications, L.P. and Gem Communications, Inc. and the radio licensees listed in its Exhibit A ("Petitioners").

The proposed channel substitution will enable KM to operate without impacting Public Safety and Commercial land-mobile station operations whose operating

frequencies are located immediately adjacent to UHF-TV Channel 14. Furthermore, second harmonic effects of TV Channel 14 fall across the aural STL spectrum used by FM transmitting stations on Deer Point to receive their programming. Without a channel substitution, we estimate that KM would have to spend \$500,000 to \$1,000,000 to construct and operate on Channel 14 without causing interference to land-mobile and aural STL's.

Accordingly, the proposed Channel 33 NTSC/Channel 29 DTV substitution will enable KM to bring a new television service to the Boise area without inviting unnecessary incompatibility problems and the associated expenses involved in mitigating these problems.

COHEN, DIPPELL AND EVERIST, P. C.

TABLE I
NTSC TO NTSC UHF-TV ALLOCATION SITUATION
FOR THE PROPOSED SUBSTITUTION OF
CHANNEL 33 FOR CHANNEL 14 AT
BOISE, IDAHO
MAY 1997

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
33	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
18	-15	None within 150 km			--	119.9
19	-14	None within 150 km			--	95.7
25	-8	None within 100 km			--	31.4
26	-7	None within 150 km			--	95.7
28	-5	None within 100 km			--	31.4
29	-4	None within 100 km			--	31.4
30	-3	None within 100 km			--	31.4
31	-2	None within 100 km			--	31.4
32	-1	None within 150 km			--	87.7
33	0	None within 350 km			--	280.8
34	+1	None within 150 km			--	87.7
35	+2	None within 100 km			--	31.4
36	+3	None within 100 km			--	31.4
37	+4	(Radio Astronomy use only)			--	n/a
38	+5	None within 100 km			--	31.4
40	+7	None within 150 km			--	95.7
41	+8	None within 100 km			--	31.4
47	+14	None within 150 km			--	95.7
48	+15	None within 150 km			--	119.9

COHEN, DIPPELL AND EVERIST, P. C.

TABLE I-A
NTSC TO DTV UHF-TV ALLOCATION SITUATION
FOR THE PROPOSED SUBSTITUTION OF
CHANNEL 33 FOR CHANNEL 14 AT
BOISE, IDAHO
MAY 1997

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
33	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
25	-8	KBCI DTV	Boise, ID	N 43°45'16" W 116°05'53"	0.0	< 24.1
26	-7	KTVB DTV	Boise, ID	N 43°45'16" W 116°05'56"	0.1	< 24.1
29	-4	KTRV DTV	Nampa, ID	N 43°45'18" W 116°05'52"	0.0	< 24.1
30	-3	None within 120 km			--	> 96.6
31	-2	None within 120 km			--	> 96.6
32	-1	None within 120 km			--	88.5
33	0	KUID DTV	Moscow, ID	N 46°40'54" W 116°58'13"	332.4	> 244.6
34	+1	Allot. DTV	Weiser, ID	N 44°14'49" W 116°58'12"	88.8	> 88.5
35	+2	None within 120 km			--	> 96.6
36	+3	None within 120 km			--	> 96.6
37	+4	(Radio Astronomy use only)			--	n/a
40	+7	None within 120 km			--	> 96.6
41	+8	None within 120 km			--	> 96.6
47	+14	None within 120 km			--	> 96.6
48	+15	None within 120 km			--	> 96.6

COHEN, DIPPELL AND EVERIST, P. C.

TABLE II
NTSC AND DTV UHF-TV ALLOCATION SITUATION
SUGGESTED COMPLEMENTARY DTV CHANNEL 29
TO THE CHANNEL 33 NTSC ALLOTMENT AT
BOISE, IDAHO
MAY 1997

NTSC Channel	Adjacent Channel	Call	City/State	Geographic Coordinates	Separation	
					Actual km	Required km
29	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
14	-15	Delete NTSC	Boise, ID	N 43°45'18" W 116°05'52"	0.0*	<9.7
15	-14	None within 120 km			--	>96.6
21	-8	None within 120 km			--	>96.6
22	-7	None within 120 km			--	>96.6
25	-4	None within 120 km			--	>96.6
26	-3	None within 120 km			--	>96.6
27	-2	None within 120 km			--	>96.6
28	-1	None within 120 km			--	>88.5
29	0	None within 350 km			--	>244.6
30	+1	None within 120 km			--	>88.5
31	+2	None within 120 km			--	>96.6
32	+3	None within 120 km			--	>96.6
33	+4	None within 120 km			--	>96.6
40	+7	None within 120 km			--	>96.6
41	+8	None within 120 km			--	>96.6
DTV						
Channel						
-1	28	None within 120 km			--	>88.5
0	29	None within 300 km			--	>223.7
+1	30	None within 120 km			--	>88.5

*PRM to Specify NTSC Channel 33

COHEN, DIPPELL AND EVERIST, P. C.

TABLE III
NTSC TO NTSC UHF-TV ALLOCATION SITUATION
FOR THE COMPLEMENTARY ALLOTMENT OF CHANNEL 39
WITH THE PROPOSED SUBSTITUTION OF
CHANNEL 33 FOR CHANNEL 14 AT
BOISE, IDAHO
MAY 1997

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
39	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
24	-15	None within 150 km			--	>119.9
25	-14	None within 150 km			--	>95.7
31	-8	None within 100 km			--	>31.4
32	-7	None within 150 km			--	>95.7
34	-5	None within 100 km			--	>31.4
35	-4	None within 100 km			--	>31.4
36	-3	None within 100 km			--	>31.4
37	-2	(Radio Astronomy use only)			--	>n/a
38	-1	None within 150 km			--	>87.7
39	0	None within 350 km			--	>280.8
40	+1	None within 150 km			--	>87.7
41	+2	None within 100 km			--	>31.4
42	+3	None within 100 km			--	>31.4
43	+4	None within 100 km			--	>31.4
44	+5	None within 100 km			--	>31.4
46	+7	None within 150 km			--	>95.7
47	+8	None within 100 km			--	>31.4
53	+14	None within 150 km			--	>95.7
54	+15	None within 150 km			--	119.9

COHEN, DIPPELL AND EVERIST, P. C.

TABLE III-A
NTSC TO DTV UHF-TV ALLOCATION SITUATION
FOR THE COMPLEMENTARY ALLOTMENT OF CHANNEL 39
WITH THE PROPOSED SUBSTITUTION OF
CHANNEL 33 FOR CHANNEL 14 AT
BOISE, IDAHO
MAY 1997

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
39	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
31	-8	None within 120 km			--	> 96.6
32	-7	None within 120 km			--	> 96.6
35	-4	None within 120 km			--	> 96.6
36	-3	None within 120 km			--	> 96.6
37	-2	None within 120 km			--	> 96.6
38	-1	None within 120 km			--	> 88.5
39	-0	None within 350 km			--	> 244.6
40	+1	None within 120 km			--	> 88.5
41	+2	None within 120 km			--	> 96.6
42	+3	None within 120 km			--	> 96.6
43	+4	None within 120 km			--	> 96.6
46	+7	None within 120 km			--	> 96.6
47	+8	None within 120 km			--	> 96.6
53	+14	None within 120 km			--	> 96.6
54	+15	None within 120 km			--	> 96.6

COHEN, DIPPELL AND EVERIST, P. C.

TABLE IV
NTSC AND DTV UHF-TV ALLOCATION SITUATION
FOR THE SUGGESTED COMPLEMENTARY DTV CHANNEL 36
TO THE POTENTIAL CHANNEL 39 AT NBC ALLOTMENT AT
BOISE, IDAHO
MAY 1997

NTSC Channel	Adjacent Channel	Call	City/State	Geographic Coordinates	Separation	
					Actual km	Required km
36	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
21	-15	None within 120 km			--	> 96.6
22	-14	None within 120 km			--	> 96.6
28	-8	None within 120 km			--	> 96.6
29	-7	None within 120 km			--	> 96.6
32	-4	None within 120 km			--	> 96.6
33	-3	None within 120 km			--	> 96.6
34	-2	None within 120 km			--	> 96.6
35	-1	None within 120 km			--	> 88.5
36	0	None within 350 km			--	> 244.6
37	+ 1	None within 120 km			--	> 88.5
38	+ 2	None within 120 km			--	> 96.6
39	+ 3	None within 120 km			--	> 96.6
40	+ 4	None within 120 km			--	> 96.6
43	+ 7	None within 120 km			--	> 96.6
44	+ 8	None within 120 km			--	> 96.6
DTV Channel						
35	-1	None within 120 km			--	> 88.5
36	0	KIDK DTV	Idaho Falls, ID	N 43°29'51" W 112°39'50"	278.6	> 223.7
37	+ 1	(Radio Astronomy use only)			--	n/a

Federal Communications Commission

DA 97-_____

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. 97-_____
of the Commission's Rules, the)	RM-9039
Table of Allotments for)	
Television Broadcast Stations)	
(Boise, Idaho))	

NOTICE OF PROPOSED RULE MAKING

Adopted:

Released:

Comment Date:

Reply Comment Date:

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by KM Communications, Inc. ("Petitioner") on July 10, 1996, as amended by Petitioner on May 15, 1997, proposing the allotment of UHF television Channel 33 in substitution for NTSC Channel 14 at Boise, Idaho.¹ The allotment is potentially the community's third local television service. If Channel 33 is substituted for Channel 14, Petitioner requests that its pending application for Channel 14 at Boise (File No. BPCT-941215KF) be amended to specify operation on Channel

¹ KM originally requested that Channel 21 be substituted for Channel 14, but amended its petition for rulemaking to request that Channel 33 be substituted for Channel 14 after Channel 21 was reserved as the DTV channel to be paired with NTSC Channel 4 at Boise, in the Commission's Sixth Report and Order in the DTV proceeding. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Report and Order, FCC 97-115 (released April 21, 1997) ("Sixth Report and Order").

33, with cut-off protection. Petitioner states its intention to amend its application to apply for Channel 33 at Boise if Channel 33 is allotted with cut-off protection. Petitioner also requests that Channel 29 be allotted as the digital television ("DTV") channel to be paired with analog National Television System Committee ("NTSC") Channel 33.

2. In support of its proposal, Petitioner states that on December 15, 1994, Petitioner filed its application (File No. BPCT-941215KF) for a construction permit for Channel 14, and on February 2, 1995, the Commission released a Public Notice accepting Petitioner's application for filing and setting a March 20, 1995 cut-off date.² Petitioner states that International Television Network, Inc. ("ITN") was the only party to file a competing, mutually-exclusive application for Channel 14 at Boise before the cut-off date (File No. BPCT-950320KE). Since the applications are mutually exclusive, the conflict would have to be resolved by the burden and expense of a comparative hearing and, at the present time, there is no basis upon which to either designate the applications for a comparative hearing or to otherwise resolve these mutually exclusive applications.³ However, Petitioner states that, pursuant to the Commission's recent waiver for ninety days of the limit on settlement payments made to parties dismissing applications as part of a universal settlement of a frozen comparative proceeding,⁴ Petitioner and ITN entered into a settlement agreement and filed a Joint Request for Approval of Universal Settlement (the "Joint Request") on December 14, 1995, whereby ITN agreed to dismiss its competing application; the Joint Request remains pending before the Commission.

3. Petitioner also states that a petition to deny was filed against its application by certain land mobile radio licensees, claiming that Petitioner's proposed Channel 14 operation may cause objectionable interference to their existing operations, to which Petitioner filed an opposition and the petitioners a reply;⁵ and that the Commission requested further information on this issue, to which Petitioner responded with a timely-filed, responsive amendment. Petitioner states that the proposed substitution of Channel 33 for Channel 14 would resolve the land mobile radio interference concerns, and therefore would facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and

² See Public Notice, Report No. A-188 at 2 (released February 2, 1995).

³ The Commission has imposed a freeze on comparative hearings, see FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), and Modification of FCC Comparative Proceedings Freeze Policy, 9 FCC Rcd 6689 (1994), in light of the holding in Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993).

⁴ See Public Notice, FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, FCC 95-391 (released September 15, 1995).

⁵ See Petition to Deny filed March 20, 1995, by Idaho Communications, L.P. and Gem Communications, Inc.; Opposition to Petition to Deny filed April 4, 1995 by KM; and Reply to Opposition to Petition to Deny filed April 28, 1995 by petitioners.

the grant of the Joint Request, which otherwise may be delayed pending the Commission's resolution of the land mobile radio petition. Furthermore, Petitioner estimates that construction on Channel 14 may require an additional \$500,000 to \$1,000,000, to resolve the land mobile radio interference concerns that would be avoided by the proposed substitution of Channel 33 for Channel 14, and therefore such economic costs could be saved and the public interest served by the substitution.

4. Petitioner asserts that the allotment of Channel 33 at Boise may be made in compliance with the Commission's technical requirements and its policies for protecting future advance television allocations,⁶ including the Commission's DTV rules and policies adopted in the Sixth Report and Order.

5. Moreover, Petitioner contends that Commission precedent and policy has been to add an additional channel for a community if the only vacant channel is the subject of a comparative proceeding, and the new channel can be added consistent with other allotment policies, such as the minimum distance separation rules and the ATV freeze policy, and where additional channels are available for allotment in response to other expressions of interest, citing Sioux Falls, South Dakota, 11 FCC Rcd 1069 (Allocations Branch 1996). Petitioner also contends that the Commission has allowed petitioners to retain cut-off protection for their pending applications in similar circumstances, where no other timely-filed expressions of interest are filed or, if such expressions of interest are filed, there is at least one additional allotment which can be made to accommodate those parties. Id.; see also, Copeland, Kansas, 5 FCC Rcd 7682 (1990); Roseburg, Oregon, 6 FCC Rcd 4369 (1991). Accordingly, Petitioner claims that the substitution of Channel 33 for Channel 14, with cut-off protection, would resolve the potential land mobile radio interference concerns, facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and the grant of the Joint Request, thereby expediting authorization of a new television service for Boise, and thus providing the public with access to additional stations.

6. We believe Petitioner's proposal warrants consideration because the substitution of Channel 33 for Channel 14 at Boise, Idaho, could potentially provide the community with its third local television broadcast service. In addition, the proposed allotment substitution would resolve the potential land mobile radio interference concerns and speed the resolution of the comparative proceeding, by resolving an obstacle to the approval of the settlement agreement and the Joint Request that have been pending before the Commission since December 1995. Petitioner's amendment of its petition to request Channel 33 instead of Channel 21 would also be consistent with the Commission's stated goal to "avoid creating DTV allotments that would conflict with proposed new NTSC allotments" in petitions for rulemaking filed before the July

⁶ Boise is approximately 555 kilometers from the Portland, Oregon freeze area, and thus is well beyond the area subject to the advance television freeze. See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 Fed. Reg. 28346, July 29, 1987.

25, 1996 adoption of the Sixth Further NPRM in the DTV proceeding,⁷ by resolving a conflict with a proposed NTSC allotment created by the adoption of the DTV allocation table in the Sixth Report and Order.⁸ An engineering analysis has determined that Channel 33, with zero offset, can be allotted to Boise in compliance with the Commission's minimum distance separation requirements at city reference coordinates.⁹ Since it appears that there are at least two additional UHF television channels available for other expressions of interest at Boise, we shall propose to allow petitioner to amend its application to specify operation on Channel 33 in lieu of Channel 14, with cut-off protection. An engineering analysis has also determined that Channel 29, with zero offset, can be allotted to Boise as the DTV channel to be paired with NTSC Channel 33 at the same city reference coordinates, in compliance with the Commission's Rules.

7. Accordingly, we shall seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u> _____	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Boise, Idaho	2, *4+, 7, 14	2, *4+, 7, 33

8. We shall also seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u> _____	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Boise, Idaho	*21, 25, 26	*21, 25, 26, 29

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

⁷ See Sixth Report and Order at ¶ 112 (citing Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996) ("Sixth Further NPRM").

⁸ See Sixth Report and Order, Appendix B at B-18 (allotting Channel 21 as the DTV channel to be paired with NTSC Channel 4 at Boise).

⁹ The reference coordinates for Channel 33 at Boise are North Latitude 43° 45' 18" and West Longitude 116° 05' 52".

10. Interested parties may file comments on or before ____ [date] ____, and reply comments on or before ____ [date] ____, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner, or its counsel, as follows:

Alan C. Campbell, Esq.
 Irwin, Campbell & Tannenwald, P.C.
 1730 Rhode Island Avenue, N.W., Suite 200
 Washington, D.C. 20036-3101
 (Counsel for KM Communications, Inc.)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact ____ [name] ____, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
 Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

Attachment: Appendix

CERTIFICATE OF SERVICE

I, Laura Ann Campbell, hereby certify that on this 15th day of May, 1997, copies of the foregoing "Amendment to Petition for Rulemaking" have been served by hand delivery (* denotes hand delivery) or first class mail, postage prepaid, upon the following:

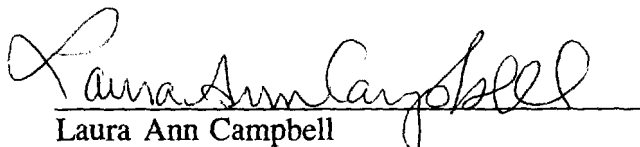
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Laura Ann Campbell